STATE OF MICHIGAN

IN THE SUPREME COURT

GEORGE H. GOLDSTONE,

Plaintiff-Appellant

-vs-

Supreme Court No. 130150
Court of Appeals No. 262831
Oakland County No. 04-060611-CZ

THE BLOOMFIELD TOWNSHIP PUBLIC LIBRARY, by and through Its Board of Trustees,

Defendant-Appellee

_____/

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APPELLEE'S BRIEF IN OPPOSITION TO
APPELLANT'S APPLICATION FOR LEAVE TO APPEAL

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STATEMENT OF JURISDICTION

The Statement of Jurisdiction in the Application is complete and correct.

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STATEMENT OF THE STANDARD OF REVIEW

Defendant-Appellee agrees with the standard of review set forth in the Application.

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COUNTER-STATEMENT OF QUESTIONS INVOLVED

I. DOES A PUBLIC LIBRARY HAVE THE RIGHT UNDER THE MICHIGAN CONSTITUTION AND THE STATE AID TO PUBLIC LIBRARIES ACT TO RESTRICT THE CIRCULATION OF ITS RESOURCES TO ITS RESIDENTS, SERVICE CONTRACTEES, AND MEMBERS OF ITS COOPERATIVE LIBRARY?

The Trial Court answered "Yes"

The Court of Appeals answered "Yes"

Defendant-Appellee answers "Yes"

Plaintiff-Appellant answers "No"

II. DID APPELLANT ABANDON HIS EQUAL PROTECTION AND FIRST AMENDMENT CLAIMS BY FAILING TO ADEQUATELY BRIEF AND ARGUE THOSE CLAIMS IN THE COURT OF APPEALS?

The Court of Appeals answered "Yes"

Defendant-Appellee answers "Yes"

Plaintiff-Appellant answers "No"

III. MAY A PUBLIC LIBRARY RESTRICT THE CIRCULATION OF ITS RESOURCES TO ITS RESIDENTS WITHOUT VIOLATING THE EQUAL PROTECTION CLAUSE IN THE FEDERAL AND MICHIGAN CONSTITUTIONS OR THE FIRST AMENDMENT TO THE FEDERAL CONSTITUTION?

The Trial Court answered "Yes"

The Court of Appeals did not answer this question.

Defendant-Appellee answers "Yes"

Plaintiff-Appellant answers "No"

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INTRODUCTION

The issue presented by the Application involves a public library's right to regulate the circulation of its books and other resources. For nearly a century, the legislature has enacted statutes that have confirmed the right of public libraries to base borrowing policies on residency requirements. Defendant-Appellant George H. Goldstone seeks to have an obscure section of the state constitution interpreted in a manner that would eliminate a library's control over the circulation of its books and its ability to raise revenue from service agreements with neighboring communities that have no public library.

Goldstone purports to represent all of the citizens of Michigan, but in actuality, less than 1/5 of 1% of the state's residents live in an area that is not served by a public library.[1] Ironically, Goldstone is not even one of those few. He resides in Bloomfield Hills, one of the wealthiest communities in the United States, albeit one that lacks its own public library. Nevertheless, residents of Bloomfield Hills have borrowing privileges at the Oakland County Research Library, as well as the ability to obtain privileges at other community libraries in Oakland County.

What Goldstone seeks to enforce is not a constitutional right, but a right of convenience. Quite simply, he wants to be able to borrow books from one particular library; the Bloomfield Township Public Library (hereinafter referred to as "BTPL"), the Defendant-Appellee herein.

Goldstone already has complete access to BTPL's books and resources while on the premises. He also can borrow books from any number of nearby public libraries, including those operated by the cities of Pontiac and Troy, as well as the Oakland County Research Library. His crusade is ultimately selfish, and is not shared by the vast majority of the residents of the state,

[1] Department of History, Arts and Libraries.

all of whom have the ability to borrow books from at least one, if not several, nearby public libraries.

Goldstone's Application essentially ignores the well-reasoned Court of Appeals decision in this matter. The Court of Appeals held only that the state constitution and statutes do not require a public library to issue library cards or lend books to nonresidents. Yet, Goldstone's Application erroneously states that the Court of Appeals made rulings relating to the fees that can be charged to nonresidents, and whether payments negotiated through service contracts are disguised "taxes" (Application, pp. 1-2).

This Court must be selective in the applications it chooses to hear, and the process is not served by an application that fails to address the rationale and analysis of the Court of Appeals in favor of irrelevant, inaccurate and unsupported statements of fact and law. If this issue merits additional debate, which it does not in light of the Court of Appeals opinion, Goldstone will not be capable of succinctly arguing the core constitutional issue, as his Application clearly demonstrates. More importantly, Goldstone's strained interpretation of the state constitution poses a real danger for the existing public libraries of this state and the communities that pay for their support. If the state constitution is interpreted to require every public library to offer full privileges to nonresidents as Goldstone advocates, the existing system of contractual arrangements between public libraries and communities without libraries, created and fostered by the legislature, will be eliminated. The resulting loss of revenue would lead to a drastic reduction of the services offered by public libraries.

For these reasons, in addition to the substantive reasons that support the decision of the Court of Appeals, the Application for Leave to Appeal should be denied.

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COUNTER-STATEMENT OF FACTS

The operative facts upon which the Motion for Summary Disposition was presented to the trial court are not in dispute. However, Goldstone's "Statement of Material and Undisputed Facts" is a misnomer. Goldstone recites numerous extraneous facts that were never considered by the trial court and were not germane to the court's determination. Many of those facts would be hotly contested by BTPL if they were relevant to this appeal. Furthermore, the "Statement of Material and Undisputed Facts" contains improper argument and references discovery issues that were never addressed by the trial court or the Court of Appeals.

The following "Counter-Statement of Facts" is condensed from the factual statement in Defendant's Brief in Opposition to Plaintiff's Motion for Partial Summary Disposition, Entry of Declaratory Judgment and for Injunctive Relief ("Defendant's Brief"). These are the operative facts upon which the trial court and the Court of Appeals made their decisions and they are truly not in dispute.

BTPL is a free public library established by the voters of Bloomfield Township (hereinafter "Township") in 1964. BTPL is principally supported by taxes paid by the Township's residents (Defendant's Brief, p. 2).

Residents of the Township enjoy full privileges at BTPL, including the right to borrow materials, utilize meeting rooms, access remote internet service and enroll in special programs. Nonresidents of the Township also enjoy access to nearly all of BTPL's materials and services (Defendant's Brief, Kotulis-Carter Aff., ¶13). However, nonresidents are not permitted to borrow materials. Remote internet access and meeting rooms are not available to nonresidents, and some programs are only available if space permits (Defendant's Brief, p. 2).

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Notwithstanding the foregoing, nonresidents of the Township can enjoy the same privileges as residents under certain circumstances. BTPL is a member of a library cooperative of 90 community libraries and branches located throughout southeastern Michigan. The cooperative is called The Library Network. Residents of communities that support a library-member of The Library Network enjoy residential privileges at many of the libraries in the cooperative, including BTPL (Defendant's Brief, p. 2).

In addition, BTPL provides residential privileges to nonresidents on a contractual basis. Since 1964, BTPL and the City of Bloomfield Hills (hereinafter "City") shared a contractual relationship whereby the City made an annual payment to BTPL to enable the City's residents to enjoy the same privileges as residents of the Township. Under the most recent contract, the City paid BTPL the sum of $664,278.00 over three years. The contract expired on November 13, 2003 (Defendant's Brief, p. 2).

Under the last three-year contract, the City's residents had paid half of the amount, on a per housing unit basis, that the Township's residents paid in taxes to support the library. When the Township and City began to negotiate for a new three-year contract, BTPL asked the City to pay a fair and equitable amount per housing unit. BTPL asked the City to increase the amount it paid per household to an amount that was closer to what each Township's household was paying in tax dollars (Defendant's Brief, p. 3).

The amount requested by the Township was $1,390,650.00 over three years. The City was only willing to pay $1,134,000.00 over three years before it broke off negotiations. Instead of providing library service to its residents, the City is now simply reimbursing its residents who purchase a nonresident library card from the Troy public library. According to Goldstone, the City spent only $25,000.00 from December, 2003 through March, 2005, to reimburse its

residents for those library cards, compared to $300,000.00 in contract fees for the same number of months under the prior contract. BTPL is still open to reaching an agreement on a new contract with the City (Defendant's Brief, p. 3).

Presently, BTPL has a reciprocal borrowing agreement with the Cranbrook Educational Community and Cranbrook Academy of Art which allows students, staff and faculty at the Cranbrook schools to have borrowing privileges at BTPL, and allows residents of the Township to have reciprocal access to their facilities ("Cranbrook Agreement") (Defendant's Brief, p. 3).

Goldstone is a resident of the City. Although he has access to nearly all of BTPL's materials and services, he wants to be able to borrow books as well. Since Goldstone is a nonresident and does not have borrowing privileges from another library in The Library Network, or through the Cranbrook agreement, he was denied the right to borrow materials from BTPL. Furthermore, although Goldstone offered to purchase a nonresident library card or pay a nonresident borrowing fee, BTPL does not issue nonresident library cards or make borrowing privileges available to individual nonresidents at any fee, except through the cooperative or contractual arrangements (Defendant's Brief, pp. 3-4).

Goldstone states that prior to the termination of the service agreement between BTPL and the City, he had a nonresident library card issued by BTPL (Application, p. 4). While it is true that City residents lost their borrowing privileges at BTPL, they never had "nonresident" library cards. Under the service agreement, all City residents were treated as if they were residents of the Township and received the same library cards as were received by residents. BTPL did not issue special nonresident cards to City residents.

Goldstone claims that the Court of Appeals made a factual finding that the members of BTPL's library cooperative would not lend books to Goldstone because he was a resident of a

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city that had no service agreement with BTPL (Application, p. 5). Of course, the Court of Appeals only recited the facts it obtained from the briefs of the parties, or as found by the trial court. The Court of Appeals makes no factual findings of its own. The member libraries of the cooperative each make their own rules on the circulation of their books. If a member of the cooperative chooses not to loan books to a person who is not a resident of a community with a member library or a contract with a member library, that is the choice of the member library.

Goldstone admits that he was able to obtain a nonresident library card with full borrowing privileges from the Pontiac Public Library (Application, p. 5). It is undisputed that as a resident of Oakland County, and the state of Michigan, Goldstone has borrowing privileges at the Oakland County Research Library and the state Library of Michigan.

Goldstone filed a complaint in the Oakland County Circuit Court seeking to force BTPL to issue him a nonresident library card with borrowing privileges. The trial court decided the case on Goldstone's motion and ruled that neither the Michigan constitution, the federal constitution nor any state statute required BTPL to issue a nonresident library card to Goldstone (A-1)[2]. The Court of Appeals affirmed (A-7).

[2] References to documents in the Appendix are by page number, e.g., A-1, A-2, etc.

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ARGUMENT

I

MICHIGAN PUBLIC LIBRARIES HAVE THE RIGHT UNDER THE STATE CONSTITUTION AND THE STATE AID TO PUBLIC LIBRARIES ACT TO RESTRICT THE CIRCULATION OF THEIR RESOURCES TO THEIR RESIDENTS, SERVICE CONTRACTEES, AND MEMBERS OF THEIR COOPERATIVE LIBRARY.

A. Const 1963, art 8, §9

The Michigan Court of Appeals held that Const 1963, art 8, §9, does not require public libraries to issue nonresident library cards or make accessible all services of local libraries to nonresidents (A-12). Goldstone's Application challenges the Court's reading of art 8, §9. However, his interpretation of art 8, §9 is not supported by the language of the constitution or the stated intention of its drafters.

Art 8, §9 states as follows:

> The Legislature shall provide by law for the establishment and support of public libraries which shall be available to all residents of the state under regulations adopted by the governing bodies thereof. All fines assessed and collected in the several counties, townships and cities for any breach of the penal laws shall be exclusively applied to the support of such public libraries, and county law libraries as provided by law.

The Court of Appeals held that the services to be provided by public libraries are subject to "regulations adopted by the governing bodies thereof". Therefore, the constitutional mandate clearly does not contemplate unfettered or free access (A-9). BTPL, in its argument to the Court of Appeals, went one step further and suggested that art 8, §9 contains regulatory "bookends". The drafters left it to the legislature to enact legislation that would make libraries "available to all residents of the state", while reserving the actual regulation of that "availability" to the local library governing boards. BTPL maintains that the legislature has created a statutory plan based

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on contractual arrangements and cooperatives to encourage existing libraries to share their resources with their neighbors. These statutes accomplish the goal set forth in art 8, §9 while allowing the libraries to maintain control over their books and materials.

The Court of Appeals reached its conclusion by employing the accepted rules of construction for constitutional provisions:

> The primary objective in interpreting a constitutional provision is to determine the text's original meaning to the ratifiers, the people, at the time of ratification. *Wayne County v Hathcock*, 471 Mich 445, 468; 684 NW2d 765 (2004). While legal or technical terms should be assigned their legal or technical meanings, to understand or discern the intent of those ratifying the provision, this Court's focus is to determine and effectuate the common understanding of the text at the time of its ratification. *Id.* at 468-469; see also *Phillips v Mirac*, 470 Mich 415, 422; 685 NW2d 174 (2004). Additionally, to clarify meaning, the circumstances surrounding the adopting of a constitutional provision and the purpose sought to be accomplished may be considered. *Comm for Constitutional Reform v Secretary of State*, 425 Mich 336, 340; 389 NW2d 430 (1986). (A-8).

Both sides agree that the Court of Appeals utilized the proper rules to interpret art 8, §9.

BTPL argues that "available to all residents" is susceptible of many meanings. While Goldstone insists that the phrase necessarily encompasses the circulation and borrowing of books, the language could mean a more limited form of access in the context of library services. For example, Webster's Encyclopedic Unabridged Dictionary of the English Language (1989 ed) defines "available" as:

1. suitable or ready for use; of use, or service, at hand.
2. readily obtainable, accessible.

A library offers a multitude of onsite services that do not involve the borrowing of books; e.g. reading rooms, listening stations, Internet, etc. BTPL makes all of these services available to residents and nonresidents alike.

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A search of other state constitutions reveals no similar provisions. The federal constitution ignores libraries because, like education and schools, regulation of libraries is a traditional state function. Palmer v Bloomfield Hills Board of Education, 164 Mich App 573, 577 (1987).

The Court of Appeals did not attempt to reach a definitive meaning for "available" in art 8, §9. Instead, the Court attempted to discern what the drafters intended in adopting the language they chose. The most instructive tool for discerning the circumstances surrounding the adoption of the provision is the floor debates in the Constitutional Convention record. This Court has said that the debates are particularly helpful "when we find in the debates a recurring thread of explanation binding together the whole of a constitutional concept". House Speaker v Governor, 443 Mich 560, 581 (1993) (quoting Regents of the University of Michigan v Michigan, 395 Mich 52, 59-60 (1975)).

When the 1963 Constitution was being debated, there was already a constitutional and statutory framework in place for a statewide public library system. Const 1908, art 11, §14, which preceded Const 1963, art 8, §9, stated in part as follows:

> The legislature shall provide by law for the establishment of at least 1 library in each township and city . . . (A-16)

In theory, every person would be a resident of a community with a public library. Nonresident privileges would not be an issue. In addition, municipalities were encouraged to contract with each other to ensure that every state resident would receive residential status at a public library. Statutes in place in 1963 that permitted contractual arrangements between libraries and communities included MCL 397.33 (A-17); 397.213 (A-19); 397.214 (A-20); and 397.471 (A-23).

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Unfortunately, the theory behind Const 1908, art 11, §14 did not become reality. Most townships did not build libraries. Although many municipalities entered into contracts to provide access for their residents, there were still pockets of the state where no local library was available.

Art 8, §9 was proposed to encourage municipalities to find alternatives to building their own libraries by promoting the use of contracts and combinations. Delegate Brown stated the following to the Convention:

> Now, because each county solves the library problem in its own particular way, the committee on education felt that it would be advisable to generalize the language in the first portion of our proposal, and that was simply to say that because as a practical matter you are not having today a library in every township, **we will simply say that we will extend library services so that they will be available throughout the state; that this will encompass those areas where they want to have a small, independent library, and also take care of those problems where they think perhaps a group or area library would be better suited for their needs**. (Emphasis added). 1 Official Record, Constitutional Convention 1961, p. 831 (A-46).

The intent of the drafters was to encourage libraries to contract and combine with each other for service, just as BTPL and the City had done for nearly 40 years. The intent was not to force libraries to provide service to persons who were not contributing to the cost of operating the library.

Delegate Bentley, Chairman of the Committee on Education, stated in support of art 8, §9:

> The present language emphasizes that 'public' libraries will be 'available' to residents without fixing how or where the libraries themselves shall be organized. **The committee presumes that legislation may be written so that each library may make reasonable rules for the use and control of its books.**

> Under this proposal present libraries will be retained. **But to make libraries more available to the people their services may be expanded through cooperation, consolidation, branches and bookmobiles**. (Emphasis added) Id at 822 (A-45).

Delegate Bentley envisioned that public libraries would become more "available" to nonresidents by **expanding** their reach through contracts, branches and traveling bookmobiles. There is no suggestion that nonresidents would have an unlimited right to borrow books and remove them from the library's local community. To the contrary, it was presumed that the governing boards of the libraries could regulate the borrowing of their materials.

The most contentious part of the debate previews the very dispute that brings this matter to this Court. The delegates debated over whether the proposed language would require a library to offer "free service to all residents of the state". Delegate Liebrand stated as follows:

> By implication at least, the phrase, "which shall be available to all residents of the state", means to me that the service of any library shall be available, free, to all residents of the state, or at least shall be available to everyone on the same terms as offered to the residents of the municipality which operates the library. Now, I feel that this may very well place an undue burden upon existing libraries.
>
> * * * * * * * * * * * * *
>
> Now, we have, adjoining us there in Bay City - and I am talking about other libraries where our situation is not unique. I think all of those who live in cities, particularly industrial cities of any size, will find themselves faced with the same proposition. We find ourselves with a small satellite city bordering on ours, the city of Essexville. We find ourselves fringed and hinged with 6 townships with a population of 30,000 or 35,000 people. Bay City itself has only 50,000. There is a constant demand by these adjoining townships and from the city of Essexville, to be given free library service, and **it would be my opinion that under the language which I seek to delete, we might be obligated to provide free library service for these adjoining townships and the city of Essexville. This, with the city of Bay City paying 80 per cent of the operating costs, would be manifestly unfair**.

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> **I don't think any library would object to permitting a tourist or a traveling salesman to come into its reading room and look at a magazine or two, but the business of providing full time library service, with the circulation of books, is, as I say, an undue burden. Year after year I have gone to the city commission of the city of Bay City at their budget meeting, and one of the first questions that is always asked of our library committee is this: Are you providing free service for any municipality other than the city of Bay City? If you are, we are going to reduce your budget because you are getting too much money. We, the city of Bay City, are not obligated to provide library service to these other municipalities, any more than we are obligated to provide fire department service or police department service.**
>
> **So, I feel that there is a danger in the language that I seek to delete.** (Emphasis added) Id at 834 (A-47).

Other delegates assured Delegate Liebrand that it was their intent to leave the specifics of "availability" to the legislature. Delegate Andrus noted that libraries were currently charging neighboring communities for residential privileges, or they could charge on an individual basis. She emphasized that the service would not be "free" but that the libraries would have options in making their services "available":

> One of the first problems that came up was, people said, "**we don't want to have to pay for our library and then have other people use it.**" **We don't mean that by this language.** It is not considered, in any sense. That will be a matter to be worked out. As I said, there are 5 counties working together in the upper part of the state at the present time, all contributing to a common fund which can be utilized throughout that area. We want to get away from that township and city each having a library and having a broader base, which will be available. (Emphasis added). Id at 835 (A-48).

When asked again if she was contemplating "free" service, Andrus stated that it is "available, but it doesn't say free". Id at 835. (A-48).

Delegate Follo stated that the proposed amendment contemplated increased patronage of the state library and the addition of county libraries. Id at 835. (A-48).

Delegate Bentley reiterated that it was not the intent of the committee to "make any change in the existing situation". Id at 835. He further stated:

> [T]he library services, whether . . . through branch libraries, bookmobiles or what else you have, may be extended to those residents of the state who are not now adequately provided with library services. But I repeat, that so far as working out the rules for individual libraries to govern the use and control of their books, the committee felt that this matter was and should be statutory.
>
> * * * * * * * * * * * * * *
>
> [T]here is nothing in the constitution which would permit a resident of any other part of the state to come into your library . . . and demand services which were contrary to the regulations which you laid down yourself for the use and control of your books. Id at 835-836. (A-48).

As Goldstone points out, there was at least one delegate who insisted that to his mind, the contemplated language would require every public library to make its books available to all state residents. Notwithstanding his viewpoint, the drafters refused to be more specific in their choice of words in order to allow the legislature room to enact appropriate legislation. Instead, the drafters addressed the concerns by adding the phrase ". . . under regulations adopted by the governing bodies thereof" to the proposed constitutional provision. According to the delegates, this was done to make certain that art 8, §9 would not be interpreted strictly to mean unfettered or free access. Id at 836. (A-49).

The debates lead to two indisputable conclusions. First, none of the delegates expressed a personal intention that every state library issue borrowing privileges to all state residents. Even the delegate who interpreted the proposed language as requiring such a result did not indicate that he intended such a result.

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Second, and most important, the delegates themselves expressed no consensus on what form "availability" would take. That is why they formed the "bookends"; legislation to establish "availability" and local regulation of "availability" by the libraries.

What is also certain is that art 8, §9 does not vest the citizens of Michigan with new constitutional rights. As the delegates noted, it was not the intent of the committee "to make any change in the existing situation". Id at 835. (A-48). That situation consisted of those communities without libraries entering into contracts with existing libraries for service. Such was the situation between BTPL and the City for nearly 40 years.

The Court of Appeals correctly reached the conclusion, based on the language of the section, together with the circumstances surrounding its adoption, that art 8, §9 does not require public libraries to lend its books to nonresidents (A-12). Furthermore, the Court held that an opinion authored by the state Attorney General did not call for a different conclusion.

In 1980, the Attorney General of Michigan was asked to give an opinion to a state legislator on whether state residents are entitled to use the facilities of any public library under art 8, §9. OAG, 1980, No 5739 (July 15, 1980) (A-28). The Attorney General reviewed a portion of the Constitutional Convention debate and reached the conclusion that state residents are entitled to use any public library, and that "available" under the Michigan constitution included the right to borrow books. The Attorney General believed that the framers of art 8, §9 did not intend to create, or perpetuate, a library system where library privileges are not provided to state residents on an equal basis. Id at 874. (A-30).

Surprisingly, in that opinion, the Attorney General did not refer to any of the sections of the debate reproduced in this Brief. Nowhere in the opinion does the Attorney General acknowledge the debate over whether libraries will have to provide free services to all state

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residents. Instead, without citing any clear support for his conclusion, the Attorney General opined that "available" must include the right to borrow books. Id at 874. (A-30).

Respectfully, the Attorney General misunderstood or ignored the intentions of the drafters. While the opinions of the Attorney General are binding on state agencies for limited purposes, they are not binding on the courts. People v Waterman, 137 Mich App 429, 439 (1984).

The Court of Appeals was not persuaded that 1980 OAG 5739 supported Goldstone's position. The Court felt that the opinion did not address the libraries' discretion to adopt regulations pertaining to the governance, functioning, and management of their resources (A-9). Furthermore, the Court found that later opinions of the Attorney General acknowledged the right of communities with libraries to enter into contracts with other communities for library service. 1997 OAG 5180. (A-41). The Court found that this recognition was not consistent with a right of "unfettered access" to library resources (A-9).

The legislature has enacted numerous statutes facilitating the availability of library services throughout the state. As the delegates to the Constitutional Convention noted, it was the practice of libraries to enter into agreements with communities that did not have a library well before art 8, §9 was adopted. The effect of those agreements was to bestow residential status on the citizens of the communities without a library. MCL 397.213 is typical of this legislation:

> (1) Notwithstanding a contrary city, village or township charter provision, a township, village or city adjacent to a township, village or city that supports a free public circulating library and reading room under this act may contract for the use of library services with that adjacent township, village, or city.
>
> (2) A township, city, or village may pay for the use of library services contracted for under subsection (1) by levying a tax not to exceed 2 mills of its state equalized valuation, by use of money from the municipality's general fund, or with money received

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> under Act No. 59 of the Public Acts of 1964, being sections 397.31 to 397.40 of the Michigan Complied Laws. A tax shall not be levied or increased under this section unless a majority of the electors of the municipality voting on the question vote in favor of the tax. (A-19).

A version of this statute has existed since 1877. It was not repealed in 1963 when art 8, §9 was adopted. In fact, the millage ceiling was increased from 1 to 2 mills in 1987.

MCL 397.213(2) expressly authorizes a community without a library to pay for library services furnished by another community by levying a tax on its inhabitants. Other statutes have similar provisions. MCL 397.214(1) allows residents of a township to petition the township to make a contract with a community that has a library and to impose a tax on the residents to pay for that service. (A-20). MCL 397.301 permits a county to make a contract with a public library within the county to offer library services for the county's residents and to impose a property tax to cover the cost of said services. (A-22).

Notwithstanding these statutes, Goldstone argues throughout his Application that BTPL is attempting to impose an illegal tax on the residents of the City in the guise of a services contract. Goldstone argues that public libraries are limited in the amount that can be negotiated with other communities to provide them with library service. However, the aforementioned statutes place no restriction on the right of a public library to demand any contract price that the market will bear to provide services to another community. More importantly, the community that agrees to pay for the services can ask its residents to absorb all or some of the cost in the form of increased taxes up to a designated ceiling. There is absolutely nothing illegal about requesting or negotiating a contract price from a neighboring community comparable to the amount that the library's own residents already pay in taxes to support the library. From the standpoint of the contractee, it is certainly less expensive than constructing a new library.

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As the Court of Appeals noted, statutes such as MCL 397.213 would be completely unnecessary if art 8, §9 required every public library to provide full access to their services to nonresidents (A-13). Furthermore, a community without a library would never agree to a contract for library services if its residents could obtain those services on an individual basis. The impact on libraries that depend on contract revenue would be devastating.[3]

It was the tax dollars of the Township that built and maintained BTPL for over 40 years. Because BTPL opens its doors and nearly all of its resources to nonresidents, the taxpayers of the Township assume the burden of those additional expenses directly attributable to serving the nonresident patrons. However, as Delegate Liebrand cautioned the Constitutional Convention, at some point the fundamental fairness of the arrangement is called into question. Would it be fair for the taxpayers of the Township to pay $280 per household in taxes to maintain and operate the library when any resident of Michigan could enjoy the identical privileges for only the cost of a borrowing fee (which Goldstone alleges to be only $47)? The delegates assured Delegate Liebrand that it was not their intention by the adoption of art 8, §9 to require the residents of communities with libraries to subsidize their use by the rest of the state's residents.

BTPL's Executive Director, Karen Kotulis-Carter, filed an affidavit in opposition to Goldstone's Motion for Summary Disposition. She stated that the Township has been subsidizing the City's use of BTPL for nearly 40 years. Although the City has rarely contributed its fair share to the operation of the library, BTPL was willing to make its services available to the City through a series of contracts, negotiated at arm's length, and consistent with the legislative framework. It is through contracts with neighboring communities that BTPL has chosen to make its materials available to nonresidents (Defendant's Brief, Kotulis-Carter Aff.).

[3] BTPL is not dependent on contract revenue. When the City did not renew its contract, the loss of revenue to BTPL was offset by an increase in the millage paid by the Township's residents.

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Eileen M. Palmer, Director of The Library Network, filed an affidavit in the trial court in which she states that 18 of the 65 main member libraries in the cooperative have contracted to provide library service to numerous outside communities that do not have their own libraries. In southeastern Michigan alone, the goal of providing library service to communities without libraries is being successfully implemented by the use of contracts. Over $2.6 million is willingly paid by these communities to obtain library service. (Defendant's Brief, Palmer Aff.).

Linda J. Farynk, President of the Michigan Library Association, the oldest and largest library association in Michigan, attested in the trial court that in 2004-2005, 60% of Michigan libraries had service contracts. In 2003-2004, public libraries received over $11 million in funding from these contracts. Yet, under Goldstone's theory, these contracts are unnecessary because the communities without libraries are entitled to free privileges. Without service contracts, the $11 million received would have to be passed on to the taxpayers of the communities with libraries in the form of higher taxes to provide the "free" service to communities without a library. This is not consistent with the legislation that encourages contractual arrangements between communities to provide library service. (Defendant's Brief, Farynk Aff.).

The legislature has not moved to repeal any of the statutes that encourage local libraries to contract with municipalities for nonresident access notwithstanding the passage of art 8, §9. MCL 397.214 still permits libraries to enter into three-year contracts with neighboring communities for access "upon terms and conditions to be agreed upon between the library board of directors and the legislative body of the other township, city or village". (A-20). MCL 397.471 authorizes libraries to contract with each other to "promote the widest public use of books, manuscripts, and other materials. . . and promote the best use by the members of the

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public desiring to do so". (A-23). These statutes would be unnecessary if art 8, §9 truly removed a library's right to control the privileges accorded to nonresidents.

The debates from the Constitutional Convention leave no doubt that the delegates had no intention of changing a system and statutory scheme that had worked admirably for over 50 years. They simply wanted to encourage existing libraries to continue making their resources available to other communities through service agreements and cooperatives, rather than continue the mandate (ignored in practice) that all townships and cities establish their own libraries. The decision to lend books, the primary resource of any library, is left to the sound discretion of the governing board. In this case, BTPL chooses to make its resources available to nonresidents through service agreements with other communities. This practice is sanctioned by MCL 397.213 and is still the primary means for expanding the resources of libraries throughout the state. The decision of BTPL not to issue nonresident library cards is constitutional and the decisions of the trial court and Court of Appeals permitting said practice should not be disturbed.

B. State Aid to Libraries Act

Goldstone argues that the State Aid to Libraries Act, MCL 397.551 et seq. ("Act"), requires public libraries to permit nonresidents to borrow books for a borrowing fee that is regulated by statute. The Court of Appeals held that there are no statutory mandates, either standing alone or when read in conjunction with art 8, §9, that require public libraries to extend borrowing privileges to nonresidents (A-15).

As previously discussed, art 8, §9 was a mandate to the legislature to pass legislation that would make library services available to all residents of the state. One of the first statutes passed in response to art 8, §9 was the State Aid to Public Libraries Act of 1965. Since repealed and

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replaced, that statute, as its name suggests, provided state funding for public libraries based on designated criteria.

The State Aid to Public Libraries Act, MCL 397.551 et seq., adopted in 1977, not only continued state funding for public libraries, but created a statewide network of cooperative libraries. These cooperatives[4] serve geographic areas designated by the State Board of Education. MCL 397.556 (A-26). Every local library in Michigan is eligible to join the cooperative for the area in which it is located. MCL 397.562 (A-27).

The creation of library cooperatives fulfills the mandate of art 8, §9. Every resident of the state resides in an area serviced by a library cooperative, even if the resident's community does not have a local library. Additional state aid is available for those libraries that provide service to nonresidents through cooperatives, service contracts or other means.

The creation of library cooperatives is one of the legislature's efforts to make library services "available" to every state resident. The extent of the privileges offered by the cooperative libraries is still left to the sound discretion of the governing bodies of the local libraries. However, it is clear from the statutes that created the cooperatives that the legislature did not intend that every local library offer full privileges to every resident of the state.

MCL 397.561 restricts the cooperative library's service area to the residents of the area:

> Following establishment of a cooperative board, **residents** of the cooperative library's area are eligible to use the facilities and resources of the member libraries subject to the rules of the cooperative library plan. Services of the cooperative library, including those of participating libraries, are to be available at reasonable times and on an equal basis within the areas served to schoolchildren, individuals in public and nonpublic institutions of learning, and a student or **resident** within the area. An applicant refused service may appeal to the department, which shall review

[4] In practice, the individual local libraries that belong to the cooperative are commonly referred to as "cooperative libraries" while the service center itself is called the "library cooperative".

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> the operation of the cooperative library and may withhold state aid funds until the services are granted. (Emphasis added).

If art 8, §9 required libraries to make all services available to nonresidents, the legislature would not have limited the availability of services to "resident[s] within the area". None of the existing library statutes that restrict privileges to residents or contractees would still be necessary. Yet, they remain on the books.[5]

Furthermore, the sanction imposed on a library that refuses to provide service to a resident of the cooperative is the loss of state aid. BTPL lost state aid when its contract with the City ended. Sanctions would not be necessary for a violation of §561 if all libraries were required by the Constitution to provide full service to nonresidents.

Goldstone incorrectly argues that provisions in the Act require public libraries to extend borrowing privileges to all residents of the state. However, as the Court of Appeals noted, the purpose of the Act is "to provide for the establishment of cooperative libraries", as set forth in its title (A-13). While cooperative libraries make library services more available throughout the state, the Act itself does not address the admission or circulation policies of individual libraries.

Goldstone argues that MCL 397.555 requires all libraries in the state to adopt an "open door policy" as set forth in art 8, §9. The statute states in relevant part as follows:

> To be eligible for membership in a cooperative library, a local library shall do all of the following:

[5] MCL 397.206 states that "every library and reading room established under this act shall be forever free to the use of the **inhabitants** where located..." (A-18); MCL 397.216 states that the people of a township which has contracted for library services with another township" shall have all rights in the use and benefits of the library that they would have if they **lived in the township**. . ." (A-21); and MCL 397.472 provides that **residents** of communities that are taxed to support a library with a service contract shall have the use of the respective libraries to the contract. (A-24). (Emphasis added).

(a) Maintain a minimum local support of 3/10 of a mill on taxable value, as taxable value is calculated under section 27a of the general property tax act. . .
(b) Participate in the development of cooperative library plans.
(c) Loan materials to other libraries participating in the cooperative library.
(d) **Maintain an open door policy to the residents of the state, as provided by section 9 of article VIII of the state constitution of 1963**. (Emphasis added) (A-25).

In the first place, the above requirements are a basis for membership in a cooperative only. If every public library in Michigan was required to have an "open door policy" by art 8, §9, there would be no need to make it a requirement for membership in a cooperative.

Secondly, if an "open door policy" requires a library to extend borrowing privileges to nonresidents, as Goldstone argues, there would be an irreconcilable conflict between §555(d) and §561 which restricts use of the member libraries to residents and students in the cooperative area. No such conflict would exist if art 8, §9 did not require libraries to extend all of its services to nonresidents.

The Court of Appeals relied upon well-established rules of statutory construction to discover and give effect to the intent of the legislature in adopting the Act. Neal v Wilkes, 470 Mich 661, 665 (2004). The Court also relied upon the rule that states that statutes that relate to the same subject or share a common purpose are in pari materia and should be read together, even if they do not refer to each other and even if they were enacted at different times. Proper application of the in pari materia rule gives the fullest possible effect to the legislative purpose underlying harmonious statutes without overreaching, unreasonableness or absurdity. Ryan v Department of Corrections, 259 Mich App 26, 30 (2003) (A-13).

The only way that MCL 397.555(d) and 397.561 can be read together is if art 8, §9 does not require that every library offer full residential privileges to every resident of the state. Art 8,

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§9 should be read as the drafters intended; that a public library be available to every state resident under regulations adopted by the governing bodies thereof. Under the Act, every state resident lives in a library cooperative area. That includes Goldstone, who resides in the area served by The Library Network cooperative. No member library in the cooperative can close its doors to Goldstone, without jeopardizing its membership or its right to receive state aid. MCL 397.561. At a minimum, the access provided includes in-house use of the library's resources. However, no member library is required to loan books to Goldstone or any other person that does not reside in the local library's service area. That privilege can only be extended by the governing bodies of each local library. As the Court of Appeals so held, "an 'open door policy' and 'availability' merely by considering their plain and ordinary meaning, do not equate to unfettered and unrestricted access to library resources" (A-14).

In 1984, the legislature amended the Act to add MCL 397.561a:

> A library may charge nonresident borrowing fees to a person residing outside of the library's service area, including a person residing within the cooperative library's service area to which the library is assigned, if the fee does not exceed the costs incurred by the library in making borrowing privileges available to nonresidents including, but not limited to, the costs, direct and indirect, of issuing a library card, facilitating the return of loaned materials, and the attendant cost of administration.

This amendment followed an opinion by the Attorney General in 1983, holding that if a library decided to charge a fee to a nonresident for borrowing privileges, the fee could not exceed the costs of issuing a library card, facilitating the return of loaned books, and the attendant cost of administration. The opinion was based, in part, on the assumption that a library could not charge a fee to produce revenue, because that would be a tax that could only be imposed by the legislature. OAG, 1983, No 6188 (October 17, 1983) (A-32).

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Apparently, a number of local libraries had been charging borrowing fees to persons who lived in the cooperative area, but not in the local service area. Following the issuance of 1983 OAG 6188, those libraries became concerned that the borrowing fees charged to cooperative residents were no longer permitted. The legislature addressed that concern by adopting MCL 397.561a, which clearly allows a library to charge a borrowing fee to residents of the cooperative. See House Bill 5828 (A-50).

As the Court of Appeals noted, there is nothing in MCL 397.561a that requires a library to charge a nonresident borrowing fee. The statute is permissive. The word "may" designates discretion and indicates that a library may choose not to charge borrowing fees to a nonresident. Preserve The Dunes, Inc v Department of Environmental Quality, 253 Mich App 263, 297 (2002). MCL 397.561a only addresses the fee that may be charged **if** a library chooses to loan books to nonresidents. The statute does not require a library to loan books to nonresidents. That privilege may only be extended by the governing body of the library pursuant to art 8, §9 of the state constitution (A-14).

Furthermore, the borrowing fee is placed in the statute that creates library cooperatives and refers to the fees to be charged to persons using the cooperative network. Thus, the imposition of a borrowing fee is limited only to libraries that are members of the cooperative. The Court of Appeals recognized that §561a does not apply in general to public libraries throughout the state which may or may not belong to a cooperative (A-14).

Goldstone also makes the unsupported assumption that when the legislature used the word "privilege" in MCL 397.561a, with regard to borrowing privileges, it meant that the privilege extended to all residents of the state. It is clear from the statute that the legislature viewed borrowing privileges as a right reserved solely to the residents of the local library. The

legislature recognized that although a library could choose to extend that privilege to nonresidents, it was not required to do so. And if it chose to exercise its discretion, it could not charge an amount for the privilege that exceeded its actual costs in making the privilege available to nonresidents.

Had the legislature intended to require all libraries to extend borrowing privileges to all state residents, it would not have enacted the residential restrictions found in MCL 397.561. Had the legislature understood art 8, §9 to require every library to extend borrowing privileges to nonresidents, it would not have been necessary to require libraries to adhere to art 8, §9 as a condition for eligibility in a cooperative and for the receipt of state aid. If the legislature had intended MCL 397.561a to require libraries to extend borrowing privileges to nonresidents, it would have said so in the statute.

The Court of Appeals correctly held that there is nothing in the statutory mandates, including those found in the State Aid to Public Libraries Act, that require nonresident borrowing privileges (A-15). Therefore, Goldstone's Application seeking to reverse the Opinion of the Court of Appeals should be denied.

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II

APPELLANT ABANDONED HIS EQUAL PROTECTON AND FIRST AMENDMENT CLAIMS BY FAILING TO ADEQUATELY BRIEF AND ARGUE THOSE CLAIMS IN THE COURT OF APPEALS

In the trial court, Goldstone claimed that BTPL's conduct violated the Equal Protection Clauses in both the federal and state constitutions. However, his argument was nearly invisible. Goldstone did not engage in the detailed analysis normally required when constitutional issues are raised. Goldstone cited only one case to the court, Ludtke v Kuhn, 461 F Supp 86 (SDNY, 1978), but failed to show how the case was even remotely analogous, factually or legally, to the case at bar. BTPL responded with citations to several cases establishing that residential restrictions on the use of governmental services do not violate the Equal Protection Clause. The trial court rejected Goldstone's equal protection arguments on the basis of the authority provided by BTPL.

Goldstone's argument on this issue in the Court of Appeals was equally vacuous. Not only did Goldstone fail to address the cases cited by the trial court, he offered nothing in the way of analysis or authority to support his claim. He did not even argue the merits of the only case he cited, Ludtke, but merely criticized the trial court for failing to address it.

Goldstone also failed to present any argument or support for his First Amendment claim. In the trial court, Goldstone mentioned the First Amendment, but made no argument whatsoever as to its applicability in his Motion for Summary Disposition. In the Court of Appeals, Goldstone did not argue the First Amendment, but only mentioned it in the Statement of Questions Presented of his Appellant's Brief as being raised "by implication". No authority was provided as to why the First Amendment was applicable. The Court of Appeals held that

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Goldstone had abandoned his equal protection and First Amendment claims by failing to adequately provide citation to authority or argument (A-15).

Goldstone argues in his Application that citation to authority and argument are not necessary as to these issues because "the Library admitted that it was subject to both the Fourteenth and First Amendments". He also argues that this Court has the right to consider his constitutional arguments even if not raised below (Application, p. 20).

BTPL concedes, with pride, that it is indeed subject to the First and Fourteenth Amendments, just like any other citizen of the United States. However, the issue is not the applicability of the Amendments, but whether BTPL's actions have violated the rights of Goldstone guaranteed by those Amendments. The burden of proving a violation rests with Goldstone and that burden clearly requires the citation of authority and argument. The Court of Appeals properly deemed that Goldstone had abandoned his equal protection and First Amendment Claims (A-15).

While there is no doubt that this Court can choose to hear and decide any issue that comes before it, such discretion is not exercised without limits. Ironically, Goldstone again fails to provide any authority describing the circumstances under which this Court may agree to decide an issue that was inadequately presented to the courts below (Application, p. 20).

When this Court has decided to consider an issue not argued in the trial court or Court of Appeals, it has done so if consideration of the issue is necessary to a proper determination of a case. Sands Appliance Services, Inc v Wilson, 463 Mich 231, 239 (2000); Swartz v Dow Chemical Company, 414 Mich 433, 446 (1982). However, in those instances, the issue was never presented to the court below.

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When the appellant has presented an issue in the court below, but failed to adequately argue or support that issue with any authority, then this Court, like the Court of Appeals, will not do the work for the appellant and has refused to address the issue. Wilson v Taylor, 457 Mich 232, 243 (1998). Goldstone attempted to gain some advantage in the lower courts by draping his cause in the First and Fourteenth Amendments, but he did not want to do the work required to present a cogent constitutional argument to the Court of Appeals.

The lack of authority and analysis to support a constitutional issue is fatal. The Court of Appeals has stated that it will not review an issue that an appellant fails to adequately present. In Peterson Novelties, Inc v City of Berkley, 259 Mich App 1 (2003), the Court stated as follows:

> Plaintiffs contend that defendant Anger was not a party to the original action and, thus, plaintiffs' claims are not be [sic] precluded. However, plaintiffs cite no authority for this contention. "A party may not leave it to this Court to search for authority to sustain or reject its position". *Magee v. Magee*, 218 Mich App 158, 161; 553 NW2d 363 (1996). An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998); *Ambs v Kalamazoo Co Rd Comm*, 255 Mich App 637, 650; 662 NW2d 424 (2003), nor may he give issues cursory treatment with little or no citation of supporting authority, *Goolsby v Detroit*, 419 Mich 651, 655 n 1; 358 NW2d 856 (1984), after remand 211 Mich App 214 (1995). Argument must be supported by citation to appropriate authority or policy. MCR 7.212(C)(7); *Thomas v McGinnis*, 239 Mich App 636, 649; 609 NW2d 222 (2000); *Haefele v Meijer, Inc*, 165 Mich App 485, 494; 418 NW2d 900 (1987), remanded 431 Mich 853 (1988). An appellant's failure to properly address the merits of his assertion of error constitute abandonment of the issue. *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002). Therefore, this issue is abandoned. *Id., Magee, supra* at 161. (Footnote omitted). Id at 14.

Goldstone effectively abandoned the equal protection argument in favor of his art 8, §9 claim when he stated in his Appellant's Brief that the Court of Appeals should look to the record on appeal to find the necessary facts and law to support his constitutional arguments (Appellant's

Brief, p. 25). That is not the way that issues are to be presented to an appellate court. This Court should not allow Goldstone to do now what he should have done in the trial court and the Court of Appeals. This Court should consider his equal protection and First Amendment claims to have been abandoned.

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III

A PUBLIC LIBRARY MAY RESTRICT THE CIRCULATION OF ITS RESOURCES TO ITS RESIDENTS WITHOUT VIOLATING THE EQUAL PROTECTION CLAUSE IN THE FEDERAL AND MICHIGAN CONSTITUTIONS OR THE FIRST AMENDMENT TO THE FEDERAL CONSTITUTION.

A. Equal Protection

The Fourteenth Amendment to the United States Constitution states that "no state shall... deny to any person within its jurisdiction the equal protection of the law". The Michigan Constitution of 1963 states in art 1, §2 that no person shall be denied the equal protection of the law. Goldstone argues that BTPL, as a public institution, is prohibited by the Equal Protection Clauses of both Constitutions from offering certain library privileges to residents of the Township and denying them to nonresidents. He also argues that the Cranbrook Agreement violates the Equal Protection Clause.

Goldstone is wrong because the Equal Protection Clause relates to equality between persons, rather than between areas. Salsburg v State of Maryland, 346 US 545, 551; 74 S Ct 280; 98 L Ed 281 (1954). In Salsburg, the United States Supreme Court held that Maryland had the right to prohibit the admission of illegally obtained evidence in certain counties, but not in others.[6] As the Court stated:

> There is nothing in the Constitution to prevent any State from adopting any system of laws or judicature it sees fit for all or any part of its territory. If the State of New York, for example should see fit to adopt the civil law and its method of procedure for New York City and the surrounding counties, and the common law and its method of procedure for the rest of the State, there is nothing in the Constitution of the United States to prevent its doing so. This would not, of itself, within the meaning of the Fourteenth Amendment, be a denial to any person of the equal protection of the laws. **It means that no person or class of persons shall be**

[6] Admission of illegally obtained evidence has since been held to be inadmissible throughout the United States under the Fourth Amendment to the United States Constitution.

> **denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and under like circumstances.**
>
> **The Fourteenth Amendment does not profess to secure to all persons in the United States the benefit of the same laws and the same remedies. Great diversities in these respects may exist in two States separated only by an imaginary line. On one side of this line there may be a right of trial by jury, and on the other side no such right.** Each State prescribes its own modes of judicial proceeding. If diversities of laws and judicial proceedings may exist in the several States without violating the equality clause in the Fourteenth Amendment, there is no solid reason why there may not be such diversities in different parts of the same State. (Emphasis added) (Footnote omitted) Id.

Territorial uniformity is not a constitutional requisite. Andrews v Norton, 385 F Supp 672, 678 (D Conn, 1974); Cherry v Steiner, 543 F Supp 1270, 1280 (D Ariz, 1982).

Numerous jurisdictions have recognized that a state may provide certain services to its domiciled residents on a preferential basis without violating the Equal Protection Clause. Eastman v University of Michigan, 30 F3d 670, 673 (CA 6, 1994). States are permitted to charge preferential tuition rates to its own residents because a state has a legitimate interest in providing higher educational opportunities to its residents. Vlandis v Kline, 412 US 441; 93 S Ct 2230; 37 L Ed 2d 63 (1973); Spielberg v Board of Regents, University of Michigan, 681 F Supp 994, 1001 (ED Mich, 1985).

Residential restrictions on the use of public schools, parks, pools and golf courses have been uniformly upheld. In Martinez v Bynum, 461 US 321; 103 S Ct 1838; 75 L Ed 2d 879 (1983), Justice Powell stated:

> A bona fide residence requirement, appropriately defined and uniformly applied, furthers the substantial state interest in assuring that services provided for its residents are enjoyed only by residents. Such a requirement with respect to attendance in public free schools does not violate the Equal Protection Clause of the Fourteenth Amendment. [FN7] It does not burden or penalize the

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> constitutional right of interstate travel, for any person is free to move to a State and to establish residence there. **A bona fide residence requirement simply requires that the person *does* establish residence before demanding the services that are restricted to residents.**
>
> > FN7. A bona fide residence requirement implicates no 'suspect' classification, and therefore is not subject to strict scrutiny. Indeed, there is nothing invidiously discriminatory about a bona fide residence requirement if it is uniformly applied. Thus the question is simply whether there is a rational basis for it. (Emphasis added). Id at 328-329.

The United States Supreme Court utilized the appropriate constitutional analysis in Martinez. It determined that a state has a "legitimate" and "substantial" interest in protecting and preserving the right of its own bona fide residents to attend its schools, colleges, and universities. Id at 327-328. Therefore, the rational basis test applies. In Martinez, the Court found that the test was satisfied because of the state's substantial interest in maintaining the quality of local public schools. Id at 329-330.

Goldstone presents a cursory review of the three tests utilized by the federal and Michigan courts when analyzing an equal protection claim. Although Goldstone reviews the three tests, he fails to draw any conclusions as to which test should apply to the facts of this case (Application, pp. 23-24).

This Court interprets the Equal Protection Clause in the Michigan Constitution to be co-extensive with its federal counterpart. Const 1963, art 1, §2; Harvey v State of Michigan, 469 Mich 1, 6 (2003). This Court also has held that interpretations of the Equal Protection Clause of the Fourteenth Amendment have accurately conveyed the meaning of Const 1963, art 1, §2 as well. Id.

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In Crego v Coleman, 463 Mich 248 (2000), this Court described the three levels of review that accompany any equal protection challenge. The review is based on that conducted by the federal courts with regard to equal protection claims under the Fourteenth Amendment:

> When a party raises a viable equal protection challenge, the court is required to apply one of three traditional levels of review, depending on the nature of the alleged classification. The highest level of review, or "strict scrutiny", is invoked where the law results in classifications based on "suspect" factors such as race, national origin, or ethnicity, none of which are implicated in this case. *Plyler v Doe*, 457 US 202, 216-217; 102 S Ct 2382; 72 L Ed 2d 786 (1982). Absent the implication of these highly suspect categories, an equal protection challenge requires either rational-basis review or an intermediate, "heightened scrutiny" review. Id at 259.

Although Goldstone attempts to apply the "strict scrutiny" standard to BTPL's actions, it is obvious that the standard is not applicable here. BTPL is accused of providing services to its own residents that are not provided to the residents of a neighboring city. Goldstone also alleges that BTPL provides services to certain residents of the City that are not provided to other City residents through the Cranbrook Agreement. Since the alleged classifications are based on residency or an affiliation with the Cranbrook Institute, none of the "suspect" factors of race, national origin, or ethnicity are implicated. Therefore, as in Martinez, supra, the "strict scrutiny" standard is not relevant.

Neither is the "heightened scrutiny" standard review implicated herein. This standard has been applied to classifications based on illegitimacy and gender. Crego, supra at 260. Again, neither of these bases is implicated by BTPL's alleged classification of residents.

The final review is "rational basis" which was described by this Court as follows:

> Under rational-basis review, courts will uphold legislation as long as that legislation is rationally related to a legitimate government purpose. *Dandridge v Williams*, 397 US 471, 485; 90 S Ct 1153; 25 L Ed 2d 491 (1970). To prevail under this highly deferential

> standard of review, a challenger must show that the legislation is "arbitrary and wholly unrelated in a rational way to the objective of the statute". *Smith v Employment Security Comm*, 410 Mich 231, 271; 301 NW2d 285 (1981). A classification reviewed on this basis passes constitutional muster if the legislative judgment is supported by any set of facts, either known or which could reasonably be assumed, even if such facts may be debatable. *Shavers v Attorney General*, 402 Mich 554, 613-614; 267 NW2d 72 (1978). Rational-basis review does not test the wisdom, need, or appropriateness of the legislation, or whether the classification is made with "mathematical nicety", or even whether it results in some inequity when put into practice. *O'Donnell v State Farm Mut Automobile Ins Co*, 404 Mich 524, 542; 273 NW2d 829 (1979). Rather, the statute is presumed constitutional, and the party challenging it bears a heavy burden of rebutting that presumption. *Shavers, supra.* Id at 259-260.

The United States Supreme Court utilized the "rational basis" standard when it reviewed the residence requirement adopted by the state of Texas which governed minors who wished to attend public free schools while living apart from their parents or guardians. The Court found that the residence requirement did not violate the Equal Protection Clause because a bona fide residency requirement furthers the substantial government interest in assuring that services provided for its residents are enjoyed only by its residents. Martinez, supra at 328.

In the case at bar, BTPL's residency requirement serves the same purpose. It ensures that the residents who support the library with their tax dollars will receive the full enjoyment of its services. There is nothing arbitrary about the classification because it is based on the situs of the taxpayers whose taxes support the library.

Nor does the Cranbrook Agreement trigger a different result. That contract was not made with certain residents of the City, but with an institution; the Cranbrook Educational Community and the Cranbrook Academy of Art. The contract provides for library services to be provided to students, staff and faculty of the Cranbrook Educational Community. The residency of these persons is irrelevant to the contract. The fact that some of the contract beneficiaries are residents

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of the City does not create an equal protection violation because there is a rational basis for entering into the contract. The residents of the Township receive reciprocal privileges at certain of the Cranbrook facilities in exchange for providing library services to Cranbrook.

The Ludtke decision that Goldstone relies upon is completely distinguishable. Ludtke involved a female reporter's attempt to obtain locker room interviews following a sports event. The New York Yankees, with the approval of the commissioner of major league baseball, had adopted the policy of allowing only male reporters access to the locker room. The court, in striking down the policy, held that the policy, based on gender classifications, did not protect the privacy of the players so much as preserve an all-male locker room. Supra at 97.

Obviously, Ludtke fails to support Goldstone's position. It does not involve libraries, schools, or residency requirements. The decision is based on gender classifications, which are reviewed under the "heightened scrutiny" test and must serve important governmental objectives to withstand constitutional challenges. Supra at 97. Ludtke is completely irrelevant to the facts of this case.

Goldstone devotes pages of his Application to the plight of those City residents who cannot borrow books from BTPL. Yet lost in all of Goldstone's rhetoric is the fact that he chose to live in the City, knowing full well that the City did not have its own library. Nobody forced Goldstone to live in the City. He could have chosen to live in the Township just so he could enjoy the BTPL. People frequently move to certain communities in order to send their children to a public school perceived as superior to one in another community.

Goldstone's reliance on the "plight" of Brent Mills, a City resident and student at the well-regarded, private Detroit Country Day School, is equally unpersuasive (Application, p. 6).

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Goldstone argues that Mills is at a scholastic disadvantage to his classmates who reside in the Township because they have access to the resources of the BTPL and he does not.

It is difficult to be sympathetic with Mills' position. He resides in one of the wealthiest communities in the country by choice. He attends an exclusive, private school by choice. He claims that there are no public schools in the City, but the website maintained by the Bloomfield Hills Schools lists 18 public schools available to the City's residents. Had Mills attended one of the City's public schools, he would have had access to the school library and would not be at a disadvantage to his classmates. Mills still enjoys access to all of BTPL's online data bases when he is onsite at BTPL. His disadvantage is one of convenience, and not substance.

Mills' complaint, and the complaint of every other resident of the City, including Goldstone, should be directed at the City and not BTPL. For 39 years, the City was able to provide full residential privileges for all of its residents at a fraction of the cost paid by the Township residents. When BTPL finally asked the City to pay its fair share (but not more than the share paid by Township residents) the City decided not to renew the contract. The City made an economic decision, just as it does every year when it decides what services it can afford to provide to its residents.

Goldstone has not been denied the equal protection of the laws under the Constitutions of the United States or Michigan. Like its federal counterparts, the Michigan Court of Appeals has held that legislation is not constitutionally invalid simply because it affects only one locality within the state. Hertel v Racing Commission, 68 Mich App 191, 198 (1976). BTPL is permitted by the United States and Michigan Constitutions to provide preferential treatment to its own residents in the supply of library services. In the absence of a constitutional mandate that requires a public library to issue a library card to individual nonresidents, even at a fee, BTPL is

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entitled to deny individual nonresidents such as Goldstone, the privilege of borrowing materials from its public library. Instead, BTPL welcomes the opportunity to offer service to nonresident communities on a contract basis.

B. First Amendment

Goldstone argues that the First Amendment guarantees a person's right to read and that any unreasonable limitation on that right violates the First Amendment.[7] Not surprisingly, Goldstone provides no authority to support his audacious statements.

Goldstone's "right to read" is actually classified by the United States Supreme Court as a freedom to receive speech. Martin v City of Struthers, 319 US 141, 146-147; 63 S CT 862; 87 L Ed 1313 (1943). In the context of public libraries, that freedom was given a thorough analysis in Kreimer v Bureau of Police for the Town of Morristown, 958 F2d 1242 (CA 3, 1992).

Kreimer involved a public library which adopted rules governing patron conduct. A homeless person, who frequented the library, was expelled numerous times for violating these rules. The plaintiff brought suit seeking a declaration that the rules violated his constitutional rights under the First and Fourteenth Amendments.

The Court ultimately held that although the First Amendment guarantees a right to receive information, that right is not unfettered and may give way to significant countervailing interests. However, the right does require "some level of access to a public library". Id at 1255. Ultimately, the Court held that some of the library's policies on conduct within the library were unconstitutional.

The major difference between the regulations in Kreimer and the residency requirement herein is that the BTPL does not deny nonresidents access to the library. The First Amendment

[7] "Congress shall make no law. . . abridging the freedom of speech. . ."

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freedom to receive speech and information is not restricted at all by BTPL. Any person, resident or nonresident, may come to BTPL and use its resources onsite. Nobody is denied the right to receive the information in BTPL's custody.

The restriction that BTPL imposes is on the ability to remove books from the library. That restriction was not discussed directly in Kreimer. However, the Third Circuit indirectly held that residency requirements do not constitute a violation of the First Amendment when it stated:

> Moreover, we do not face the more difficult scenario in which one individual possesses First Amendment rights and others do not. **Here, if the First Amendment protects the right to reasonable access to a public library, as we hold it does, this is a right shared equally by all residents of Morristown and Morris Township**. (Emphasis added). Id at 1264-1265.

By implication, the Court acknowledged that the First Amendment does not require the library to make its resources available to nonresidents, so long as it did not discriminate between its residents.[8]

Even if Kreimer cannot be read to support BTPL's residency requirement, it certainly establishes that the First Amendment is satisfied if some level of access is provided to the library's books and resources. It is undisputed that Goldstone and all other nonresidents have access. Goldstone has produced no authority to suggest that a restriction on the borrowing of books is an unreasonable limitation on the freedom to receive speech. Since Goldstone's access to the books is not denied, he has failed to present a violation of the First Amendment.

[8] The Third Circuit also rejected the equal protection claim of the plaintiff because its rules of conduct were not arbitrary. Id at 1269.

RELIEF REQUESTED

For the foregoing reasons, Defendant-Appellee Bloomfield Township Public Library respectfully requests that this Honorable Court deny Plaintiff-Appellant's Application for Leave to Appeal from the decision of the Court of Appeals in this matter.

Respectfully submitted,

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